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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

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### SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

Congressman Michael R. Turner, Chairman



### OVERSIGHT HEARING

### STATEMENT BY MICHAEL R. TURNER, CHAIRMAN

**Hearing topic:** *"Counting the Vote: Should Only US citizens Be Included In Apportioning Our Elected Representatives?"*

**Tuesday, December 6, 2005**

**10:00 am**

**Room 2247 Rayburn House Office Building**

Welcome to the Subcommittee's oversight hearing entitled, *"Counting the Vote: Should Only U.S. Citizens Be Included In Apportioning Our Elected Representatives?"*

We are here today to discuss a proposed amendment to the Constitution that will change how the Census Bureau determines the enumeration for the purposes of apportioning the U.S. House of Representatives.

The Fourteenth Amendment states, "Representatives of the House shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." In other words, all individuals residing in the United States on Census Day, except for non-taxed Indians, must be enumerated to determine the apportionment base.

The issue of whether non-citizens should be included in the apportionment base has received considerable congressional attention in the past. In 1940, for example, Representative Celler of New York said on the floor of the House, "The Constitution says that all persons shall

be counted. I cannot quarrel with the founding fathers. They said that all should be counted . . . The only way we can exclude [anyone] would be to pass a constitutional amendment.”

Most legal scholars agree with the view of Representative Celler that any attempt to exclude non-citizens from enumeration must be accomplished by a constitutional amendment. That is what Representative Candice Miller has proposed to do by introducing House Joint Resolution 53. This measure is a straightforward proposal to distinguish citizens of the United States from the total population for purposes of determining the apportionment base. I am willing to wager that many – if not most – Americans think this is exactly how it is done today and would be shocked to learn that non-citizens, especially those in the country illegally, have an impact on apportioning the membership of the House of Representatives.

Regardless of possible popular belief, there may be some very compelling reasons why the Framers used the word “persons” instead of the word “citizens” or “voters” when they crafted the Fourteenth Amendment. The primary question before us here today is: If H.J. Res. 53 is adopted by Congress and ratified by the states, how would things be different?

We have several witnesses today that may provide the Subcommittee some insight into what the political landscape would have looked like in the past if the census excluded non-citizens and what it may look like after the 2010 Census if H.J. Res. 53 is adopted. I think you will find this testimony most interesting.

This hearing has been structured in such a way that the Subcommittee will first hear from Congresswoman Miller so that she may describe her proposal.

The Subcommittee will then hear from a second panel comprised of two esteemed demographers, Clark Bensen, a consultant, and publisher from the Polidata Company and Steven Camarota, Director of Research for the Center for Immigration Studies. Joining these two will be Lawrence Gonzalez representing the National Association of Latino Elected and Appointed Officials.

Finally on our third panel we will hear from several legal and academic scholars including the former Director of the Census Bureau, Dr. Ken Prewitt. Joining Dr. Prewitt will be James Gimpel, Professor of Government and Politics at the University of Maryland; Johnny Killian, Senior Specialist in Constitutional Law in the American Law Division of the Congressional Research Service; Andrew Spiropoulos, Professor of Law at the Oklahoma City University School of Law, and Nina Perales, Southwestern Regional Counsel of the Mexican American Legal Defense and Educational Fund.

With that, my colleagues on the Subcommittee and I welcome you and look forward to your testimony.

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